



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

December 30, 2021

Re: FOIA Request NLRB-2022-000250

Dear William C. Graves (Employers Council):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on December 1, 2021, in which you initially sought "Representation Petitions and Certifications for all companies in Region 27 and Region 28 from January 1, 2000 through December 1, 2021." You assumed financial responsibility for the processing of your request in the amount of \$100.00.

We acknowledged your request on December 1, 2021. By email with a member of my staff on December 21, 2021, you were informed that many petition and certification records for cases filed prior to October 1, 2011, were not available in our current electronic casehandling system, NxGen. You were also advised that the standard retention period for all older case files that pre-date NxGen is six years after the calendar year in which a case is closed. You were further informed that if copies of available petition and certification records were desired, you would need to assume additional processing fees, but given that data from the entire time period was available, the assumed fees would be enough to cover the processing costs for pulling a spreadsheet. By reply email on December 28, 2021, you agreed to accept a spreadsheet covering the requested information.

Pursuant to the FOIA, reasonable searches were conducted in the Agency's electronic casehandling system, NxGen, and by reviewing previously processed FOIA requests in FOIAonline for information extracted from the Agency's legacy database, to pull responsive data. These searches produced:

- One Excel file containing data for RC, RD, RM, and UD Representation cases from Regions 27 and 28 that were filed after January 1, 2010 and closed on or before September 30, 2010. The data was originally generated from the Agency's legacy database, Case Activity Tracking System (CATS), which is no longer accessible. The Excel file contains three tabs consisting of: (1) RC, RD, and RM cases where elections were held and the cases were certified; (2) UD cases where elections were held

and the cases were certified; and (3) RC, RD, RM, and UD cases where the cases were withdrawn, dismissed, or administratively closed.

- One Excel file containing data extracted from NxGen for Region 27 and Region 28 cases that were filed from October 1, 2010, through December 1, 2021. This data includes both open and closed cases. The NxGen data also includes several older cases that were originally filed in CATS before October 1, 2010 but were closed after the Agency transitioned from CATS to NxGen. The Excel file contains two tabs consisting of: (1) a basic list of all Representation case types including the closing reason (certification, withdrawal, or dismissal); and (2) a more detailed list of the cases including the unit as listed on the petition, the unit determined, the union to certify, and the case participant information. Please note you will see some cases have more than one entry listed – this is due to multiple case parties, employer locations, and/or units.

Please be advised that any PII, such as the addresses of the petitioners (where the Petitioner Party Type is reflected as “Individual”), has been removed from the spreadsheet to protect their privacy interests. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests “from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v). Consistent with this fee category, you “will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.” 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Two hours and thirty minutes of professional time was expended in searching for and reviewing the data for release. Accordingly, please remit \$92.50.

Payment Instructions: Due to the COVID-19 pandemic and resulting widespread employee telework at the Agency’s Headquarters offices, we are no longer accepting checks or money orders as payment at this time. To submit payment for your FOIA request, please use www.pay.gov. From the www.pay.gov home page, scroll down to the bottom left corner to select “Pay a FOIA Request.” Click “See all options” and go to “Filter By Agency” to check the box for the National Labor Relations Board. Continue following instructions on the website. Please remember to include the Invoice Number, which is the NLRB FOIA Case No., and the amount you intend to pay. Further, please be advised that all FOIA payments must be paid in full before any future FOIA requests are processed.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (202) 368-1927 or by email at Jodilyn.Breirather@nlrb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nlrb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nlrb.gov

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Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (two Excel files)